

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	

COMMENTS OF MEGAPATH CORPORATION

MegaPath Corporation (“MegaPath”) respectfully submits these comments in response to the Commission’s Notice of Proposed Rulemaking issued in these proceedings on April 30, 2012. MegaPath is a universal service fund contributor that provides interconnected VoIP, broadband Internet access, and other enterprise services to wholesale and retail customers. In these initial comments, MegaPath urges the Commission to:

- avoid rules that would undermine competitive neutrality, including revenue-based assessments on additional enterprise services;
- revise the safe harbor for interconnected VoIP to 22 percent; and
- continue to allow providers to charge customers a separate line-item for universal service, rather than including it in the advertised base rate for service.

I. COMPETITIVE NEUTRALITY IS CRITICAL IN THE ENTERPRISE MARKET

We agree with the Commission that one of the most important objectives in this proceeding is “ensuring fairness and competitive neutrality in the contribution system” by

seeking to create a level playing field in which providers of similar services contribute similarly.¹ The Commission has previously found that Section 254 requires that “universal service rules should be competitively neutral and should ‘neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.’”²

While it is understandable that the Commission would consider adopting rules that clarify the applicability of FUSF assessments on various types of enterprise communications services and technologies,³ at the same time, the Commission must be mindful that the question is not nearly as simple as whether to assess “Dedicated IP, VPNs, WANs, and other network services.” Enterprise services are complex and evolving rapidly. They often are bundled with software, applications, or other services that could be provided by a third party or by the underlying provider. Even if all parties were told, for example, that “VPNs” are subject to assessment, different service providers would inevitably make different determinations about which portion of its enterprise revenues were attributable to VPN transmission. Providers would next diverge over whether various new alternatives were really “VPNs” subject to assessment. We unfortunately believe that it is unlikely that the Commission could develop any revenues-based approach to enterprise services that would result in a competitively neutral collection.

In addition, a requirement that only imposes additional USF assessments on enterprise services of entities that also provide transmission to their users would be competitively unfair. This would be unjust and inequitable to those service providers and customers that bundle enterprise services and transmission services and would create severe competitive disadvantages.

¹ NPRM, ¶ 25.

² NPRM, ¶ 8, QUOTING *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, ¶ 47 (1997).

³ See NPRM, ¶¶ 41-48.

II. THE SAFE HARBOR FOR INTERCONNECTED VOIP MUST BE UPDATED

The Commission should make a long-overdue correction to the safe harbor for interconnected VoIP services. The current rate of 64.9% was chosen at a time when VoIP was used more often as a toll bypass long-distance service, which is not true today of typical fixed VoIP services that provide the customer with a 911-capable service that replaces the need for their traditional phone service. The *NPRM* notes that “the average percentage for VoIP traffic studies is 22.1 percent interstate/international, with the median study reporting 14.7 percent interstate/international” and concludes that “traffic studies on file thus report interstate/international usage significantly lower than the safe harbors for both wireless and interconnected VoIP.”⁴ There is very little guidance from the Commission as to how traffic studies should be structured,⁵ so we have little confidence that all of our competitors that use traffic studies contribute in an equal, competitively neutral manner. If the safe harbor was reduced to the 22.1% average reported by the Commission in the *NPRM*, more service providers would elect to use the safe harbor and forgo the burdens of using studies, which would in turn result in a more competitively neutral application of FUSF on interconnected VoIP services.

III. CONTINUE PASS-THROUGH OF USF AS SEPARATE LINE ITEM

We oppose, as impractical, any rules that would “require that the advertised price include the universal service contribution.”⁶ We cannot roll the FUSF surcharge into advertised rates because not all customers are assessed the same USF surcharges. For example, a VoIP customer

⁴ *NPRM*, ¶ 125.

⁵ We do not request such additional guidance because we worry that it would be difficult to design one-size-fits-all rules that would, once adopted, remain suitable in a changing market.

⁶ *NPRM*, ¶ 391.

that places a variable amount of international toll calls will have a different FUSF surcharge each month, and it would not be possible to predict that amount in advance. Other customers are exempt from FUSF because they provide a certification that their usage is jurisdictionally intrastate or that they are themselves a FUSF contributor. We cannot account for all of these potential variations in our marketing and other product materials. Also, we sometimes offer base rates that are fixed for a term of an agreement, but we would not be able to lock in the USF portion of the rate because of its potential to change significantly, beyond our control. We believe that customers would be even more confused, rather than less so, if USF were treated differently from state USF assessments and other fees and taxes.

Even if we knew the amount of the FUSF contribution in advance, the contribution rate changes quarterly on very short notice from the Commission. It is difficult enough to update the billing systems in this timeframe, but would be much more difficult to update all marketing materials on that schedule. Nor would it be desirable to have ever-changing base rates with clunky numbers. Potential customers might see a \$102.68 rate and ask whether they can get the \$99.42 that had been advertised the week before as a “discount.”

Therefore, if further consumer education is deemed necessary, it would be preferable, and sufficient, to require carriers to post on their website or in other consumer disclosures an explanation of how USF surcharges are computed. Generic explanations describing typical bills should be sufficient, since it would be costly and impractical to provide a detailed breakdown for each customer given that, as described above, each customer’s bill could vary each month depending on their unique usage and profile.

Because it is not practical to include FUSF surcharges in our advertised base rates, it follows that we must be able to continue to charge for it separately. It would also violate the First Amendment for the Commission to prohibit us from making our customers aware of the amount they are paying to FUSF. Any government interest in educating customers about the costs of their communications services can be satisfied without restrictions on our commercial speech.

Respectfully submitted,



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